



Federal Communications Commission
Washington, D.C. 20554

May 24, 2013

Shawn Musgrave
DEPT MR 3221
PO Box 55819
Boston, MA 02205-5819
Email: 3221-39663559@requests.muckrock.com

Re: FOIA Control Nos. 2013-201

Dear Mr. Musgrave:

On March 1, 2013, the Federal Communications Commission ("Commission" or "FCC") received your Freedom of Information Act ("FOIA") request, which we designated as FOIA Control No. 2013-201.¹ In your correspondence, you requested a copy of the Commission's contract used to "purchase and maintain the FCC complaint database software (Consumer Information Management System, CIMS) as well as any end user and IT documentation and configuration manuals for this system."² In an email on March 13, 2013, we informed you that CIMS was developed a long time ago, and, in accordance with the general records retention guidance issued by the National Archives and Records Administration, such records are no longer retained by the agency.³ In addition, we explained that we are unable to locate any end-user or IT documentation, and, moreover, cannot determine whether such documents existed. Thus, we explained, we were unable to assist you with those parts of your request.⁴ In response to the March 13 e-mail, you asked us to provide the three most recent contracts for the maintenance of CIMS.⁵ We have determined that the three most recent contracts used to maintain CIMS were with CSC Information Systems (Contract No. PUR11000008) and Computech (Contracts FCC12A0017 and PUR11000077).

¹ FOIA request from Shawn Musgrave, Muckrock News, to FOIA Officer, Federal Communications Commission, dated March 1, 2013 ("FOIA request"). Subsequently, you granted the agency an extension of time until May 17, 2013, within which to respond to your FOIA request. See e-mail from Shawn Musgrave, Muckrock News, to Warren Firschein, Office of Managing Director, Federal Communications Commission, dated April 18, 2013.

² FOIA request.

³ See National Archives and Records Administration General Records Schedules, Transmittal No. 22 (April 2010), accessible at <http://www.archives.gov/records-mgmt/grs/grs03.html> (stating that routine procurement files shall be destroyed 6 years and 3 months after final payment).

⁴ See e-mail from Warren Firschein, Office of Managing Director, Federal Communications Commission, to Shawn Musgrave, dated March 13, 2013 ("March 13 e-mail").

⁵ See e-mail from Shawn Musgrave to Warren Firschein, Office of Managing Director, Federal Communications Commission, dated April 1, 2013.

Because the records you sought could contain confidential commercial information that would be exempt from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b)(4), pursuant to 47 C.F.R. § 0.461(d)(3) of the Commission's rules, we informed both Computech and CSC Information Systems that they were permitted to file a response to your FOIA request, explaining why any portions of these records are confidential commercial information that should be withheld. In response, CSC indicated that they did not object to the release of the records.⁶ Computech objected to the release of its Cost and Technical Proposal Volumes because they contain proprietary and privileged information.⁷ You did not file a reply to Computech's objections.

Section 552(b)(4) of the FOIA (Exemption 4) provides in relevant part that the disclosure requirements under the FOIA do not apply to "commercial or financial information obtained from a person and privileged or confidential."⁸ In pertinent part, information is considered "confidential" for purposes of Exemption 4 if disclosure of the material is likely "to cause substantial harm to the competitive position of the person from whom the information is obtained."⁹ This criterion has been interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury.¹⁰

With regard to Computech's objections, although its Cost and Technical Proposal Volumes were not explicitly incorporated by reference into the contract, some of the rate data was reproduced in the Statement of Work and one of the contract modifications. We have reviewed this information, and have concluded that disclosure of this rate information is likely to cause substantial harm to its competitive position. Specifically, disclosure of Computech's rates charged for specific labor categories could be used by a potential competitor to anticipate their costs and fees in future procurement actions and allow the competitor to underbid Computech, thus allowing that competitor to take business away from Computech in the future. Thus, these figures will be redacted from the documents pursuant to FOIA Exemption 4.

The contracts and modifications will be provided to you under separate cover. As mentioned above, we are unable to locate any end-user and IT documentation.

We are required by the FOIA, 5 U.S.C. § 552(a)(4), and section 0.470 of the Commission's rules, 47 C.F.R. § 0.470, to charge FOIA requesters certain fees, depending on the classification of requesters into one of three categories defined in Section 0.466 of the Commission's rules, 47 C.F.R. § 0.466. The categories are: (1) commercial use requesters; (2)

⁶ See Letter from Cynthia Nagel, Senior Contracts Administrator, CSC, to Nereyda Dunn, Office of Managing Director, Federal Communications Commission, dated April 26, 2013.

⁷ See Letter from Francine de Venoge, Chief Financial Officer, Computech, to Nereyda Dunn, Office of Managing Director, Federal Communications Commission, dated April 25, 2013.

⁸ See also *National Parks and Conservation Ass'n v. Morton*, 498 F.2d 765, 766 (D.C. Cir. 1974) (*National Parks*); 47 C.F.R. § 0.457(d) (which implements Exemption 4 of the FOIA, and provides in relevant part that records not routinely available for public inspection include "[t]rade secrets and commercial or financial information obtained from any person and privileged or confidential").

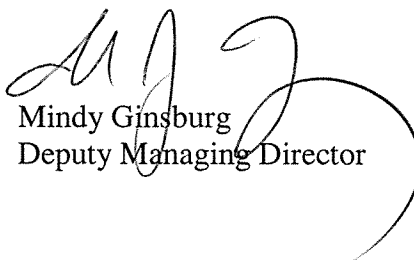
⁹ See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 873 (D.C. Cir. 1992) (quoting *National Parks and Conservation Ass'n v. Morton*, 498 F.2d at 770)).

¹⁰ See *CNA Fin. Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987).

educational and noncommercial scientific institution requesters and requesters who are representatives of the news media; and (3) all other requesters. You have been classified for fee purposes as category (2), that is, "representative of the news media," and as such you must pay for duplication cost only, and will not be charged for duplication of the first 100 pages. The fees for duplication cost are 10 cents per page.¹¹ There was minimal search and review time and the contract is being provided to you electronically, resulting in minimal fees. Therefore, you will not be charged for the fees associated with processing and responding to your FOIA request.¹²

If you consider this to be a denial of your FOIA request, you may file an application for review of this decision with the Commission's Office of the General Counsel within 30 days in accordance with section 0.461(j) of the Commission's rules, 47 C.F.R. § 0.461(j).

Sincerely,



Mindy Ginsburg
Deputy Managing Director

cc: FOIA Officer, FCC
Warren Firschein, FCC

¹¹ 47 C.F.R. § 0.465(c)(2).

¹² 47 C.F.R. § 0.470(f).